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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

In the Matter of

AMENDMENT OF SECTION 73.622(b),  
TABLE OF ALLOTMENTS,  
DIGITAL TELEVISION STATIONS  
(AVALON, CALIFORNIA)

MM Docket No. 02-\_\_\_\_  
RM-\_\_\_\_

RECEIVED

JUL - 3 2002

To: The Chief, Media Bureau

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

PETITION FOR RULE MAKING

Pappas Southern California License, LLC ("Pappas Southern California"), the licensee of primary analog UHF commercial television broadcasting station KAZA-TV, NTSC Channel 54, Avalon, California, by its undersigned counsel and in accordance with Section 1.401 of the Commission's Rules, hereby respectfully petitions the Chief of the Commission's Media Bureau to initiate a rule making proceeding for the purpose of amending the Commission's Table of Allotments for Digital Television Stations, 47 C.F.R. Section 73.622(b) (2001) (the "DTV Table of Allotments"), in order to allot either Digital Television ("DTV") Channel 29 or DTV Channel 47 to Avalon in fulfillment of the Public Health, Security, and Bioterrorism Preparedness and Response Act of 2002 (the "Act"), Public Law No. 107-188, 116 Stat. 594 (2002). In support thereof, Pappas Southern California respectfully submits as follows:

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## SUMMARY

This Petition for Rule Making ("Petition") seeks to fulfill the provisions of Section 531 of the recently-enacted Public Health, Security, and Bioterrorism Preparedness and Response Act of 2002 by requesting the Commission to initiate a rule making proceeding to amend the DTV Table of Allotments at the behest of Pappas Southern California, one of the parties that is eligible for a DTV channel allotment and assignment under the Act.

Pappas Southern California herein demonstrates that two DTV channels are potentially available to fulfill the provisions of the Act. They are DTV Channels 29 and 47. The availability of either channel depends upon the outcome of a co-pending DTV Table of Allotments rule making proceeding involving DTV channel allotments to Ontario, California. In the event that the Commission resolves the Ontario proceeding by retaining the allotment of DTV Channel 47 to Ontario, DTV Channel 29 would be available for allotment to Avalon and assignment to Pappas Southern California, in fulfillment of the Act.

In the event that the Commission resolves the Ontario proceeding by allotting DTV Channel 29 to Ontario, DTV Channel 47 would be available for allotment to Avalon and assignment to Pappas Southern California, in fulfillment of the Act, but would only represent a suitable allotment and assignment, and hence a suitable fulfillment

of the Act, if certain additional steps are taken by the Commission to ensure that DTV Channel 47 can be operated with facilities that permit replication of the coverage of Pappas Southern California's "paired" analog station KAZA-TV. Those additional steps are described in this Petition, and Pappas Southern California urges their prompt completion in the event that DTV Channel 47 is allotted to Avalon and assigned to Pappas Southern California.

Finally, Pappas Southern California herein commits to expeditiously applying for, and – if authorized by the Commission to do so – expeditiously constructing, a new DTV station in Avalon on either DTV Channel 29 or DTV Channel 47 (assuming that DTV Channel 47 can be utilized in a manner that maximizes its service potential).

### **INTRODUCTION AND BACKGROUND**

Section 531 of the Act renders eligible for DTV channel allotments and assignments any broadcast television station licensee or permittee, or its successor in interest, that had an application pending for an analog television station construction permit as of October 24, 1991, which application was granted by the Commission after April 3, 1997, and that as of the date of enactment of the Act (the President signed the Act on June 12, 2002) is the permittee or the licensee of that station. Pappas Southern California, the licensee of analog station KAZA-TV in Avalon, is within the class of

parties defined in Section 531 of the Act as being eligible for a DTV channel allotment and assignment.<sup>1</sup>

The Act further provides that, at the request of a party within the class of those declared eligible to receive a DTV channel allotment and assignment under Section 531, the Commission shall make such an allotment within 90 days of the date of the enactment of the Act, *i.e.*, on or before September 10, 2002, provided that such an allotment can be made without further modification to the Commission's Analog and DTV Tables of Allotments, 47 C.F.R. Sections 73.606(b) and 73.622(b) (2001), and is otherwise consistent with the Commission's Rules.

Attached to this Petition for Rule Making ("Petition"), as Appendix A, is the Engineering Statement of Neil M. Smith of the firm of Smith and Fisher in Lake Ridge, Virginia, Pappas Southern California's independent broadcast engineering consultant, dated July 2, 2002 (the "Engineering Statement"). Mr. Smith's Engineering Statement demonstrates that there are two potentially-available DTV channels that can be allotted to Avalon for use by Pappas Southern California for a new DTV station that would be "paired" with Pappas Southern California's analog television station KAZA-TV during the remainder of the period of the transition of television broadcasting in the

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<sup>1</sup> Pappas Southern California and its sole member, Pappas Telecasting of Southern California, LLC ("Pappas Telecasting"), are the successors in interest to Island Broadcasting Limited Partnership, whose application to the Commission for a construction permit for a new analog television station to operate on

United States from the analog to the DTV transmission formats. They are DTV Channels 29 and 47. However, the potential availability of either of those channels is dependent upon Commission action in other, co-pending proceedings.

### **AVAILABILITY OF DTV CHANNELS 29 AND 47**

Availability of DTV Channel 29. Channel 29 is the subject of a petition for rule making in MM Docket No. 01-23, RM-9660, *Amendment of Section 73.622(b), Table of Allotments, Digital Television Stations (Ontario, California)* (the “Ontario Rule Making Proceeding”). In the Ontario Rule Making Proceeding, the permittee to construct new primary digital UHF commercial television broadcasting station KFTR-DT on allotted DTV Channel 47 in Ontario, California – Univision Partnership of Southern California (“Univision”), as the successor in interest to the original petitioner in the proceeding, USA Station Group Partnership of Southern California – has requested that the Commission amend the DTV Table of Allotments by replacing KFTR-DT’s allotted DTV Channel 47 with a substitute allotment of DTV Channel 29, and modify Univision’s construction permit for KFTR-DT in order to specify operation on DTV Channel 29 in lieu of DTV Channel 47.<sup>2</sup>

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NTSC Channel 54 in Avalon, California, which is now KAZA-TV (File No. BPCT-19860210KM), was filed with the Commission on February 10, 1986 and was granted by the Commission on June 2, 1998.

<sup>2</sup> Comments both for and against the proposed substitution of DTV Channel 29 for DTV Channel 47 in Ontario were filed in the Ontario Rule Making Proceeding by several parties, including Pappas Telecasting, which opposed the proposed substitution.

It is not clear when or how the Commission will resolve the Ontario Rule Making Proceeding. In the event that the Commission should decline to substitute a new allotment on DTV Channel 29 for the existing allotment of DTV Channel 47 to Ontario, DTV Channel 29 would be available for allotment to Avalon in fulfillment of Section 531 of the Act, and Pappas Southern California would hereby request the Commission to initiate a rule making proceeding to allot DTV Channel 29 to Avalon and to assign it to Pappas Southern California in accordance with Section 531.<sup>3 4</sup> Pappas Southern California hereby commits to promptly applying for, and – if authorized by the Commission to do so – promptly constructing new DTV station KAZA-DT on DTV Channel 29.

Availability of DTV Channel 47. Alternatively, in the event that the Commission should adopt the proposed DTV channel allotment substitution that is proposed in the Ontario Rule Making Proceeding, that substitution would make KFTR-DT's currently-allotted DTV channel, Channel 47, potentially available for allotment to

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<sup>3</sup> To the extent that the allotment of DTV Channel 29 to Avalon conflicts with the earlier-proposed allotment of that channel in the Ontario Rule Making Proceeding, Pappas Southern California respectfully requests a waiver of 47 C.F.R. Section 1.420(d) (2001) in order to permit such a counterproposal to be considered at this time. The grounds for such a waiver are that the intervening enactment of Section 531 of the Act provides a sufficient basis, in the form of Congress's finding that the public interest would be served by allowing a limited class of eligible parties to obtain additional DTV channel allotments and assignments, for waiver of a Commission procedural provision.

<sup>4</sup> To the extent that the proposal to allot DTV Channel 29 to Avalon is contingent upon the outcome of the Ontario Rule Making Proceeding, Pappas Southern California respectfully requests the Commission to waive any of its rules or policies that disfavor the submission of petitions for rule making to amend the DTV Table of Allotments that are contingent upon the outcome of co-pending proceedings involving amendments to the DTV Table of Allotments, for the reasons set forth in the final sentence of note 3, *supra*.

Avalon in fulfillment of Section 531 of the Act. However, DTV Channel 47's suitability as a DTV channel for Avalon is linked to Commission actions in several co-pending proceedings.

First, the Board of Trustees, Coast Community College District ("Coast"), is the permittee to construct new primary digital UHF noncommercial, educational television broadcasting station KOCE-DT on allotted DTV Channel \*48 in Huntington Beach, California. The construction permit for KOCE-DT (File No. BPEDT-19991101AKY, granted on August 30, 2001) authorizes Coast to install the new DTV station's transmitting facilities on Mount Wilson, in near proximity to the current antenna site of Pappas Southern California's analog station KAZA-TV and to the intended antenna site of Pappas Southern California's proposed new DTV station KAZA-DT.

However, the allotment of KOCE-DT's DTV Channel \*48 to Huntington Beach was made at the site of Coast's "paired" primary analog UHF noncommercial, educational television station KOCE (TV), NTSC Channel \*50, Huntington Beach, a site known as La Habra Heights. As Mr. Smith's Engineering Statement demonstrates in Appendix A hereto, if Pappas Southern California's proposed new DTV station KAZA-DT, operating on the allotment of DTV Channel 47 to Avalon from a transmitter site on Mount Wilson, were required only to protect from interference the operation of first-adjacent-channel DTV station KOCE-DT at Coast's construction-permit site on Mount

Wilson, KAZA-DT could operate with facilities that would replicate analog station KAZA-TV's current service area and that would be equivalent to those that would be available for KAZA-DT if it were operating on DTV Channel 29, *i.e.*, 500 kilowatts of effective radiated power ("ERP").<sup>5</sup>

If, on the other hand, KAZA-DT operating on DTV Channel 47 from a site on Mount Wilson were required to protect the KOCE-DT "allotment" site for DTV Channel \*48 at La Habra Heights, KAZA-DT would be limited to only 11 kilowatts of ERP, resulting in severely curtailed coverage, and would not even be able to provide the required level of signal intensity to its city of license, Avalon. *See* Engineering Statement, Appendix A. Therefore, to the extent that the Commission may opt in the Ontario Rule Making Proceeding to substitute the allotment of DTV Channel 29 for the current allotment of DTV Channel 47 to Ontario, thereby making DTV Channel 47 available for allotment to Avalon and for assignment to Pappas Southern California under Section 531 of the Act, Pappas Southern California would respectfully request the Commission to dispense with any requirement that KAZA-DT protect the allotment site at La Habra Heights for KOCE-DT's DTV Channel \*48 allotment. Under those circumstances, Pappas Southern California would hereby seek to initiate a rule making

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<sup>5</sup> In the event that the Commission were to permit KAZA-DT, operating on the allotment of DTV Channel 47 to Avalon from a transmitter site on Mount Wilson, to enjoy transmitting facilities equivalent to those that would be available to KAZA-DT if it were able to operate on DTV Channel 29 from Mount Wilson, Pappas Telecasting would withdraw its comments in the Ontario Rule Making Proceeding, note 2, *supra*, that oppose the substitution of a new allotment on DTV Channel 29 for the existing allotment of DTV Channel 47 at Ontario.

proceeding to allot DTV Channel 47 to Avalon and to assign it to Pappas Southern California under Section 531.<sup>6</sup>

It is clear that such a dispensation would be justified in this instance. In enacting Section 531, it was obviously not Congress's intention that the limited class of parties declared to be eligible for additional DTV channel allotments and assignments in that statute be relegated to distinctly inferior allotments, assignments, or stations that could not replicate their "paired" analog stations' service areas. Moreover, by granting such a dispensation, the Commission would make it possible for virtually all of the interested parties to achieve their objectives under a truly "win-win" scenario: Univision could obtain its desired substitution of DTV Channel 29 for KFTR-DT's allotted DTV Channel 47 in Ontario, and Pappas Southern California would obtain the allotment of DTV Channel 47 for Avalon that would not be encumbered by the requirement to protect a hypothetical KOCE-DT allotment site at La Habra Heights (for which Coast possesses no construction authorization from the Commission in any event), and that would therefore be the functional equivalent, in terms of coverage, of DTV Channel 29.

Coast's attorney of record has informally advised Pappas Southern California's undersigned counsel that Coast intends to proceed with the construction of

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<sup>6</sup> To the extent that the proposal to allot DTV Channel 47 to Avalon is contingent upon the outcome of the Ontario Rule Making Proceeding, Pappas Southern California respectfully requests the Commission to waive any of its rules or policies that disfavor the submission of petitions for rule making to amend the

KOCE-DT's facilities on Mount Wilson in accordance with its construction permit in File No. BPEDT-19991101AKY, thereby making concerns over protection of the KOCE-DT channel allotment site at La Habra Heights a moot point, provided, however, that Coast's two "partners" in a three-way station construction project for a common Mount Wilson facility are likewise authorized by the Commission to construct their station facilities there.<sup>7</sup> Those two partners are Costa de Oro Television, Inc. ("Costa"), the licensee of primary analog UHF commercial television broadcasting station KJLA (TV), NTSC Channel 57, Ventura, California, and an applicant for a construction permit for "paired" primary digital UHF commercial television broadcasting station KJLA-DT, DTV Channel 49, Ventura, California (File No. BPCDT-19991101AFT); and Rancho Palos Verdes Broadcasters, Inc. ("RPVBI"), the licensee of primary analog UHF commercial television broadcasting station KXLA (TV), NTSC Channel 44, Rancho Palos Verdes, California.

In File No. BPCDT-19991101AFT, Costa has applied for a construction permit to install the DTV facilities of KJLA-DT on Mount Wilson. That application remains pending. The suitability of DTV Channel 47 as a "paired" DTV channel allotment for KAZA-DT on Mount Wilson is dependent upon the grant of Costa's

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DTV Table of Allotments that are contingent upon the outcome of co-pending proceedings involving amendments to the DTV Table of Allotments, for the reasons set forth in the final sentence of note 3, *supra*.

<sup>7</sup> Additionally, Pappas Southern California and its representatives are in the early stages of discussions with Coast and its representatives to ensure the compatibility of the possible operation of Pappas Southern California's DTV station KAZA-DT on DTV Channel 47 at Mount Wilson with Coast's analog station KOCE (TV), NTSC Channel \*50, which operates from a transmitter site at La Habra Heights. Furthermore, those discussions are also likely to address the compatibility of operating analog station KOCE (TV) at Mount Wilson, should Coast determine to relocate the facilities of its analog station from La Habra Heights to Mount Wilson.

application and the construction of KJLA-DT's facilities co-located with the authorized facilities of Coast's DTV station KOCE-DT on Mount Wilson.

RPVBI holds a special temporary authorization ("STA") to operate its analog station KXLA (TV) from a site on Mount Wilson, and is currently prosecuting an application for a construction permit that would authorize the Mount Wilson STA site for analog station KXLA (TV)'s transmitting facilities on a permanent basis (File No. BPCT-20010131ABS). That application remains pending and has been opposed by two parties. The suitability of DTV Channel 47 as a "paired" DTV channel allotment for KAZA-DT on Mount Wilson is dependent upon the grant of RPVBI's application and the construction of analog station KXLA (TV)'s facilities co-located with the authorized facilities of Coast's DTV station KOCE-DT and Costa's DTV station KJLA-DT on Mount Wilson.

If the Commission were to grant Costa's pending application for a construction permit for DTV station KJLA-DT to operate on Mount Wilson in File No. BPCDT-19991101AFT, and RPVBI's pending application for a construction permit to relocate the transmitting facilities of its analog station KXLA (TV) to Mount Wilson in File No. BPCT-20010131ABS, then -- as Pappas Southern California understands the situation -- Coast would have the assurance that it needs to proceed with the three-station construction project for its DTV station KOCE-DT on Mount Wilson, and any basis for

concern over protecting KOCE-DT's DTV channel allotment site at La Habra Heights would become entirely academic.

The Commission's oft-repeated policy in favor of the co-location of stations, whenever feasible, and in favor of hastening the transition to digital television, advocate the realization of the foregoing scenario. In addition, such a realization would make possible a satisfactory resolution of the Ontario Rule Making Proceeding and the fulfillment of the Congressional aims in Section 531 of the Act. Under those circumstances, Pappas Southern California hereby commits to promptly applying for, and – if authorized by the Commission to do so – promptly constructing new DTV station KAZA-DT on DTV Channel 47 on Mount Wilson.

### **CONCLUSION**

For the foregoing reasons, should the Commission decide in the Ontario Rule Making Proceeding not to substitute the allotment of DTV Channel 29 for the existing allotment of DTV Channel 47 to Ontario, Pappas Southern California urges the Commission to initiate a rule making proceeding for the purpose of amending the DTV Table of Allotments by allotting DTV Channel 29 to Avalon, and assigning it to Pappas Southern California, in fulfillment of Section 531 of the Act.

Alternatively, in the event that the Commission should decide in the Ontario Rule Making Proceeding to substitute the allotment of DTV Channel 29 for the existing allotment of DTV Channel 47 to Ontario, Pappas Southern California urges the Commission to (a) initiate a rule making proceeding for the purpose of amending the DTV Table of Allotments by allotting DTV Channel 47 to Avalon, and assigning it to Pappas Southern California, in fulfillment of Section 531 of the Act, (b) relieve Pappas Southern California of any requirement, in constructing new DTV station KAZA-DT on DTV Channel 47, to protect the KOCE-DT DTV Channel \*48 allotment site at La Habra Heights, and (c) act favorably and expeditiously on Costa's pending application in File No. BPCDT-19991101AFT and RPVBI's pending application in File No. BPCT-20010131ABS, in order to permit the co-location of all three stations (KOCE-DT, KJLA-DT, and KXLA (TV)) on Mount Wilson, thereby enabling Coast's construction of KOCE-DT's authorized facilities on Mount Wilson to proceed.

WHEREFORE, the Commission is respectfully urged to initiate a rule making proceeding in order to fulfill Section 531 of the Act by proposing to amend the DTV Table of Allotments in either of the following manners:

<u>City and State of License:</u>	<u>Present Channel(s):</u>	<u>Proposed Channel(s):</u>
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Avalon, California	--	29
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or

City and State of License:    Present Channel(s):    Proposed Channel(s):


Avalon, California

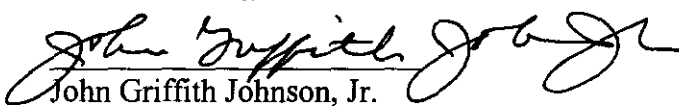
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47<sup>8</sup>

Respectfully submitted,

**PAPPAS SOUTHERN CALIFORNIA LICENSE, LLC**

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July 3, 2002

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<sup>8</sup>    Provided that there is no requirement that the DTV station operating on DTV Channel 47 at Avalon be required to protect from interference the allotment site of DTV Channel \*48 at La Habra Heights.

## **APPENDIX A**

ENGINEERING STATEMENT

The engineering data contained herein have been prepared on behalf of PAPPAS TELECASTING OF SOUTHERN CALIFORNIA, L. L. C., licensee of KAZA-TV, Avalon, California, in support of its Petition for Rulemaking to assign a digital channel to Avalon for use by KAZA-DT.

There are two channels that can be used for DTV purposes in Mount Wilson with competitive facilities, depending on the Commission's actions in related proceedings. Channel 29 can be so used, but KFTR-DT, Ontario, has proposed that it be allotted Channel 29 in lieu of Channel 47. If the Commission elects to grant the KFTR-DT petition, Channel 47 would become available for use on Mount Wilson so long as it is no longer necessary to protect the allotment facility of KOCE-DT, Channel 48, which is authorized to move to Mount Wilson.

Exhibit A describes the proposed facility. This assumes the same site, height, and pattern as KAZA-TV, and an ERP of 500 kw for either channel. Exhibit B is an interference study for Channel 29 and Exhibit C is an interference study for Channel 47. In both cases, the Commission's *de minimis* interference standards would be met. Exhibit D is a map showing that either facility would provide 48 dbμ service to Avalon.

I declare under penalty of perjury that the foregoing statements and the attached exhibits are true and correct to the best of my knowledge and belief.

  
NEIL M. SMITH

July 2, 2002

**SECTION III-D DTV Engineering**

**TECHNICAL SPECIFICATIONS**

Ensure that the specifications below are accurate. Contradicting data found elsewhere in this application will be disregarded. All items must be completed. The response "on file" is not acceptable.

**TECH BOX**

1. Channel Number:	DTV <u>29/47</u>	Analog TV, if any <u>54</u>				
2. Zone:	<input type="checkbox"/> I	<input checked="" type="checkbox"/> II <input type="checkbox"/> III				
3. Antenna Location Coordinates: (NAD 27)						
	<u>34</u> ° <u>13</u> ' <u>35</u> " <input checked="" type="checkbox"/> N <input type="checkbox"/> S Latitude					
	<u>118</u> ° <u>03</u> ' <u>58</u> " <input type="checkbox"/> E <input checked="" type="checkbox"/> W Longitude					
4. Antenna Structure Registration Number:	<u>1221073</u>					
	<input type="checkbox"/> Not applicable	<input type="checkbox"/> FAA Notification Filed with FAA				
5. Antenna Location Site Elevation Above Mean Sea Level:	<u>1,853</u>	meters				
6. Overall Tower Height Above Ground Level:	<u>122</u>	meters				
7. Height of Radiation Center Above Ground Level:	<u>113</u>	meters				
8. Height of Radiation Center Above Average Terrain:	<u>963</u>	meters				
9. Maximum Effective Radiated Power (average power):	<u>500</u>	kW				
10. Antenna Specifications:						
a.	<table border="1"><tr><td>Manufacturer</td><td>Model</td></tr><tr><td>Andrew</td><td>ATW30H8-HTC2-29/47H</td></tr></table>	Manufacturer	Model	Andrew	ATW30H8-HTC2-29/47H	
Manufacturer	Model					
Andrew	ATW30H8-HTC2-29/47H					
b. Electrical Beam Tilt:	<u>2.0</u> degrees	<input type="checkbox"/> Not Applicable				
c. Mechanical Beam Tilt:	<u>--</u> degrees toward azimuth <u>--</u> degrees True	<input checked="" type="checkbox"/> Not Applicable				
Attach as an Exhibit all data specified in 47 C.F.R. Section 73.625(c).						
<table border="1"><tr><td>Exhibit No.</td></tr><tr><td>--</td></tr></table>			Exhibit No.	--		
Exhibit No.						
--						
d. Polarization:	<input type="checkbox"/> Horizontal	<input checked="" type="checkbox"/> Circular <input type="checkbox"/> Elliptical				

**EXHIBIT A-1**

**SPECIFIED TECHNICAL FACILITIES**

**PROPOSED KAZA-DT  
CHANNEL 29/47 - AVALON, CALIFORNIA**

**SMITH AND FISHER**